

Contents:

1. **New Funding Arrangements**
2. **Licence to Practise**
3. **Age Discrimination: "retirement dismissals"**
4. **Assura LLPs**
5. **Computerised Patients Notes**
6. **Is Your GMC Registration Up-to-Date?**
7. **Fraud Act 2006**
8. **Pre-Budget Report Promises £100m for GP Surgeries**
9. **Practice Based Commissioning Income – Superannuable or Not?***
10. **Playing Music at Work Requires a Licence – update**

For the * item we are indebted to Messrs Morris Crocker & Co Chartered Accountants

1. New Funding Arrangements

Fundamental changes are being implemented in a shake up to the funding received by GP surgeries. This will reshape the GMS contract and affect many surgeries throughout England, Wales, Scotland and Northern Ireland in 2009.

Many practices throughout the United Kingdom could lose funding as the funding arrangements will now be linked to the prevalence of certain diseases in practice areas. However, some practices will gain under these new arrangements.

The transition period for this to come fully into effect is two years, starting in 2009. The aim is to provide a fairer funding arrangement and has been agreed by the BMA GPs committee and NHS Employers.

The prevalence factor calculation that currently exists will end on 1 April 2009 and on 1 April 2010 quality and outcomes framework (QOF) payments will be based on the true prevalence of chronic diseases.

The new formula that will be used to calculate funding has been brought in so that the reliance that is currently placed on the minimum practice income guarantee (MPIG) is reduced.

The Doctors and Dentists Review Body (DDRB) will recommend an overall gross uplift in GMS contract payments for 2009-2010. The money released from practices moving away from MPIG will be moved onto the global sum and distributed in accordance with a practice's weighted list.

GPs could be given 'differential uplifts' for the global sum, QOF enhanced services and correction factors. There will be a reallocation of 72 QOF points into new clinical areas to help focus more on outcome targets. There will be new points for depression, contraception, heart failure, diabetes, chronic kidney disease and chronic obstructive pulmonary disease.

GPC Chairman Dr Laurence Buckman has said that 'this helps develop funding in a way that recognises our most needy patients. GPs know the contract needs to be more stable and less dependent on corrective mechanisms.'

You may find it helpful to contact your accountant to discuss how this change may affect your practice in 2009 and 2010.

2. Licence to Practise

In the autumn of 2009 the GMC will introduce the licence to practise and from that point onwards, the Medical Register will show whether a doctor is a licensed medical practitioner or holds registration only.

This will be a significant development in medical regulation as it will now be the licence, rather than registration, which

signifies to patients that a doctor has the legal authority to practise medicine in the UK.

The licence to practise will be the first step towards the introduction of revalidation, a process which will require doctors to renew their licence every five years. Doctors will need to demonstrate to the GMC that they are up to date and are practising in accordance with the generic standards set by the GMC (as described in Good Medical Practice). Licensed doctors on the Specialist or GP Register will also need to recertify against the standards set by the relevant Royal College or Faculty.

All licensed doctors will need to participate in revalidation and so should: collect evidence about their practice which supports future revalidation; participate in annual appraisal in the workplace; and obtain feedback from patients and colleagues through an independent process.

At the end of the first revalidation cycle, the renewal of a licence to practise will indicate that the GMC has given positive affirmation that a doctor is up to date and fit to practise. This will give patients and employers further assurance that their doctor's knowledge and skills are up to date.

Prior to the licence to practise being introduced, doctors will need to decide whether or not they will require a licence and there are three options available to them:

1. Holding registration with a licence to practise
2. Holding registration only
3. Relinquishing registration

Doctors will need a licence to practise if:

- they want to write prescriptions, sign death certificates or exercise any of the other legal privileges currently reserved for registered medical practitioners;
- they hold a position as a doctor in the NHS or independent sector, on a permanent or locum basis; or
- if a doctor's employers or another party places a contractual requirement to hold a licence.

Doctors may *choose* to hold a licence where they are using their professional knowledge

and skills for activities such as teaching, research or medical journalism but where there is no statutory requirement to hold a licence to practice.

Doctors may opt to hold registration only (and no licence to practise) where they no longer wish to be able to exercise any of the legal privileges currently attached to registration, but wish to remain in good standing with the GMC. The registration will provide a record of the doctor's medical qualifications and a public statement of the doctor's commitment to the values of the profession.

Doctors who are no longer involved in any form of medical practice may take voluntary erasure from the register.

The lack of a licence, however, will not prevent doctors from providing assistance in emergencies or undertaking other activities, for which in the future, a licence will not be required.

There has been no specific date set for the introduction of licensing as this is dependent on the relevant legislation. However, the GMC aims to provide a more specific date in early 2009 so that doctors have enough time to prepare for the change and can make a decision on their future registration status.

For more information about the license to practise please visit the GMC website.

3. Age Discrimination: "retirement dismissals"

An important ruling on "retirement dismissals", or the right of a UK employer to dismiss an employee when he or she turns 65, is expected to be given by the European Court of Justice (ECJ) later this year or in early 2009. This article considers only the case of employees. The rules relating to partnerships are different and GP partnerships should seek advice before relying on Deed provisions stipulating a mandatory retirement age.

The case before the ECJ has been brought by Age Concern England and is widely known as "the Heyday case". Age Concern brought a challenge to the High Court in London

arguing that the Employment Equality (Age) Regulations 2006 ("The Regulations") introduced in the UK in 2006 are unlawful. Age Concern have sought to argue this under a 2000 European directive outlawing age discrimination.

The Regulations provide that employers may require employees to retire at 65. Age Concern's case is that the Regulations are, by allowing for a mandatory retirement at 65, unlawful as they do not go far enough in banning discrimination on the grounds of age.

The High Court in London has referred questions to the ECJ for a preliminary ruling. The case before the ECJ concerns whether mandatory retirement ages amount to discrimination and whether these are permitted under European law. A very similar case, based on the equivalent Spanish Regulations, has recently been considered by the Court. In the Spanish case the Court upheld the right to include mandatory retirement ages for employees. It was decided that where a mandatory retirement age in the Regulations could be objectively justified this would amount to lawful discrimination under EU law.

Will Heyday be successful? It is hard to say. Before the case is considered by the Court it receives the Opinion of the Court's Advocate-General. His opinion was given in September 2008. The opinion is adverse to Heyday and argues that the Regulations are not automatically unlawful. A mandatory retirement age is lawful *"if that rule is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market and it is not apparent that the means put in place to achieve that aim of public interest are inappropriate and unnecessary for the purpose"*. This opinion is not binding on the ECJ, but the Court, in the vast majority of cases, follows the Advocate General's opinion.

It is therefore more probable than not that the ECJ will rule that the mandatory retirement age is prima facie lawful. The Court will then return the case to the High Court in London where Age Concern's challenge against the Regulations will continue. The challenge will focus entirely on

whether the mandatory retirement age introduced in the UK is objectively justified.

If Heyday's challenge is successful (whether before the ECJ or the High Court), and the Regulations are found not to be lawful, then there will be an impact on employers across the UK. An employer's right to dismiss an employee on other grounds will not be affected, but turning 65 would no longer be legitimate grounds for an employee's dismissal. As for any new employees taken on, if Heyday is successful in the legal challenge, employers may need to remove any terms from new contracts of employment which stipulate a compulsory retirement age.

4. Assura LLPs

As part of our work advising general practitioners on their provider arrangements, we have assisted a number of practices regarding their involvement with LLP structures. In particular, partnerships wishing to enter into an LLP with health provider organisations, such as Assura, should be aware that the internal structure of that LLP can have consequences on their individual partnership arrangements.

Often, for the sake of simplicity, an individual partner from the partnership is nominated as the partnership's representative and that partner will subsequently become a "member" of the LLP on behalf of the entire partnership.

The nominated partner under the LLP Tax Return is deemed to be the individual responsible for profit or loss. Many GPs who have taken part in this type of arrangement have not informed their accountants of this. The accountants need to have full information about such arrangements as should the LLP make a loss, the accountants will need to amend the Partnership Tax Returns to ensure that the loss is shared in profit sharing ratios amongst the partners.

5. Computerised Patients Notes

GPs should be aware that entries cannot be deleted from GPs computerised systems. GPs should particularly be aware of this when a 'free text' entry has been made on a patient's

notes, and the GP subsequently amends or deletes the note when producing a referral letter

Even though it appears as though the entry is no longer there it can be discovered in an audit trail. Thus GPs and practice staff members should ensure that an amendment to a patient's notes is clearly explained, otherwise there is the likelihood of clinical governance implications.

It is best practice to put a date of when an amendment is made and to state the reason for the amendment

6. Is Your GMC Registration Up-to-Date?

Many practices do not have a system in place to ensure that their GP GMC registrations are up-to-date. Some GPs have paid their GMC registration by cheque instead of direct debit or have subsequently moved house without informing the GMC of their change of address.

You should be aware that it takes several weeks to re-establish registration once it lapses and during that period you are unable to practise as a GP.

To avoid the possibility of any lapse:

- Check your current registration status – this can be done via the GMC website, and
- Always inform the GMC of your change of address at the first opportunity.

All practices should have a system in place that checks the status of each and every GP working in the practice. This should include the GMC registration and medical defence organisation cover.

7. Fraud Act 2006

The law on fraud has become stricter. In particular, with the introduction of the Fraud Act 2006 both the NHS Counterfraud Service and private medical companies are becoming much more involved in seeking out and preventing fraud.

The definition of fraud now encompasses those who make no personal gain. The perpetrator needs to have the intention of gaining or causing a loss or risk of loss to another but the gain or loss does not need to actually have been made. If a person is found guilty of fraud they can be liable to imprisonment, a fine or both.

The BMA is at present producing guidance for GPs to help them avoid allegations of fraudulent behaviour. To avoid being accused of fraud ensure that all medical reports are completed accurately as any omission can be seen as resulting in a loss to the medical insurance company and therefore fraud.

We will circulate further information on this shortly.

8. Pre-Budget Report Promises £100m for GP Surgeries

The government announced in its Pre-Budget Report that it is aiming to provide financial stimulus to the economy by bringing forward £3 billion of government spending from its 2010-11 budget.

One consequence of this is a pledge of '£100 million to advance the upgrading of up to 600 GP surgeries to training practices'. The report adds that the money will be used to fund under-doctored areas of the country.

Working out to almost £170,000 per practice, it would appear to provide significant funding for GP practices to expand their premises.

However, the report has received a cautious response with suggestions that the money was unlikely to make much of a difference, and that a steady stream of funding would be more beneficial than unpredictable bursts of cash.

9. Practice Based Commissioning Income – Superannuable or Not?

It has now clearly been stated by the Pensions Agency that if Practice Based Commissioning income is paid directly to a GMS or PMS practice by a PCT or LHB, then it is pensionable net of expenses. However, if the Practice Based Commissioning income is

paid to a GP or a GMS/PMS practice by a PBC consortium or collaborative, it is not pensionable.

Their advice goes on to say that if a GP or GMS/PMS practice receives Practice Based Commissioning from a PCT/LHB and then passes it onto another GP, then that other GP's income is not superannuable.

10. Playing Music at Work Requires a Licence – update

A reader has drawn our attention to an issue we raised in the article 'Playing Music at Work Requires a Licence' from our November newsletter. GP's should be aware that surgeries that broadcast 'The Life Channel' in their waiting rooms must also obtain a PRS licence to avoid copyright infringement. We are grateful for having our attention drawn to this.

For further information please visit www.prs.co.uk.

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Bhavika Shah at csd@lockharts.co.uk.

Distribution of our Newsletters

We prepare newsletters for practitioners at approximately monthly intervals and occasional newsletters for LMCs. LMCs are welcome to distribute these to their constituents in their entirety.

If LMCs or other persons or bodies wish to circulate only part of our newsletters, we are happy for them to do so provided that the following acknowledgement and disclaimer are printed immediately below the relevant extract:

This article originally appeared in the Lockharts Solicitors' Newsletter dated [insert date] and is reproduced with their permission. The content of this article is only intended as information and should not be considered to be

legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of information in this article.

If you have any questions about this, please contact Andrew Lockhart-Miramis at alm@lockharts.co.uk.

Cessation

If at any stage you decide that you no longer wish to receive the Lockharts Newsletter, please inform Bhavika Shah or Kabir Savjani by post or email at csd@lockharts.co.uk.

Disclaimer

The content of this newsletter is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of the information in this newsletter.

Finally, the Partners and Staff at Lockharts wish all Newsletter readers a happy Festive Season and a peaceful New Year.



Contacting Lockharts

**Lockharts Solicitors
Tavistock House South
Tavistock Square
London
WC1H 9LS**

Tel: +44 (0)20 7383 7111
Fax: +44(0)20 7383 7117
Email: csd@lockharts.co.uk
Web: www.lockharts.co.uk